

### **REMARKS/ARGUMENTS**

The Applicant originally submitted Claims 1-21 in the application. The Applicant has amended Claims 1, 8, 14-16, 18, and 21. Support for the amendment can be found in paragraphs 9, 23, and 29 and Figure 2A and 2B of the original specification. No other claims have been cancelled or amended. Accordingly, Claims 1-21 are currently pending in the application.

#### **I. Formal Matters and Objections**

The Examiner has objected to Claims 15 and 16 as containing informalities. In response, the Applicant has amended Claims 15 and 16 to correct these inadvertent errors and appreciates the Examiner's diligence in finding and bringing these errors to his attention. Accordingly, the Applicant respectfully requests the Examiner to withdraw the objection of Claims 15-16 and allow issuance thereof.

#### **II. Rejection of Claims 15-20 under 35 U.S.C. §112**

The Examiner has rejected Claims 15-20 under 35 U.S.C. § 112, first paragraph, for failing to comply with the enablement requirement. More specifically, the Examiner asserts there is no indication in the disclosure of how one with ordinary skill in the art would be able to predict the future specification of the USB signal in order to construct/configure the rate determination subsystem. (See Examiner's Action, page 3.) Amended independent Claim 15, however, renders this rejection moot. Additionally, the Applicant respectfully disagrees with the Examiner's assertion since the specification does provide enablement for USB systems other than USB 2.0. For example, the specification indicates that a chirping process can be used to determine the data transfer rate. As

noted in the specification "other systems and methods to determine the data transfer rate are well within the broad scope of the present invention." (*See* paragraph 32.) Thus, a data transfer rate of subsequent USB standards may be determined by chirping or other methods readily available to one skilled in the art. Accordingly, the Applicant respectfully requests the Examiner to withdraw the §112, first paragraph rejection of Claims 15-20 and allow issuance thereof.

### **III. Rejection of Claims 1-14 under 35 U.S.C. §112**

The Examiner has rejected Claims 1-14 under 35 U.S.C. § 112, second paragraph, as being incomplete for omitting essential element(s), such omission amounting to a gap between the elements. More specifically, the Examiner asserts that the scope of the claims is affected since a particular Universal Serial Bus version is not identified. (*See* Examiner's Action, page 3.) The Applicant respectfully disagrees since the specification is not limited to the USB 2.0 version. The specification addresses determining and indicating one of multiple data transfer rates of a USB signal. The specification does not limit the present invention to a USB 2.0 signal. As noted in the specification, "the present invention provides a performance indication system for use with a Universal Serial Bus (USB) *such as* a Universal Serial Bus Specification Revision 2.0 (USB 2.0) signal." (*See* paragraph 9. *Emphasis added.*) In other words, the USB 2.0 systems provided in the specification are presented as embodiments of the present invention. These embodiments, however, do not limit the present invention as recited in amended independent Claims 1 and 8 to just USB 2.0 systems. Accordingly, the Applicant respectfully requests the Examiner to withdraw the §112, second paragraph rejection of Claims 1-14 and allow issuance thereof.

**IV. Rejection of Claims 1, 3-4, and 8-11 under 35 U.S.C. §102**

The Examiner has rejected Claims 1, 3-4, and 8-11 under 35 U.S.C. §102(a) as being anticipated by "CATC USB Chief Bus and Protocol Analyzer User's Manual," hereinafter referred to as Chief. The Applicant respectfully disagrees since Chief does not teach determining a data transfer rate of a USB signal corresponding to one of multiple data transfer rates as the USB signal traverses through a USB cable coupling a first and second device and indicating the data transfer rate to a user *via a USB terminator configured to terminate a USB cable at the first device* as recited in amended independent Claims 1 and 8.

Chief discloses a USB Chief Analyzer, consisting of a Bus and Protocol analyzer unit (Analyzer unit) and USB Chief software, that is a development and test tool for designers involved with a USB. The Analyzer unit is interposed between a USB 1.1 peripheral device and a host computer using a non-intrusive, high impedance tap. Through a USB tap that is separate from the USB being monitored, the Analyzer unit is configured and controlled by a personal computer. The Analyzer unit is connected to the host computer with one cable and to the USB 1.1 peripheral device with a second cable. (See pages 1 and 17.)

The Examiner equates the Analyzer unit with high-impedance tap to the USB terminator. (See Examiner's Action, page 4, paragraph 9.) However, the Analyzer unit does not terminate a USB cable at the USB 1.1 peripheral device or the host computer. Instead, the USB signal being monitored passes through the Analyzer unit as the USB signal traverses between the host and peripheral device. The USB signal is not terminated at either the host or peripheral device by the Analyzer unit. As such, the Analyzer unit is not a USB terminator as recited in independent Claims 1 and 8. Thus, Chief does not teach indicating a data transfer rate to a user via a USB terminator

configured to terminate a USB cable at a first device as recited in amended independent Claims 1 and 8.

Therefore, Chief does not disclose each and every element of amended independent Claims 1 and 8 and as such, does not anticipate amended independent Claims 1 and 8 and Claims dependent thereon. Accordingly, the Applicant respectfully requests the Examiner to withdraw the §102 rejection with respect to Claims 1, 3-4, and 8-11 and allow issuance thereof.

**V. Rejection of Claim 2 under 35 U.S.C. §103**

The Examiner has rejected Claim 2 under 35 U.S.C. §103(a) as being unpatentable over Chief. The Applicant respectfully disagrees. As the Examiner is no doubt aware, determination of obviousness requires consideration of the invention considered as a whole; the inquiry is not whether each element exists in the prior art, but whether the prior art made obvious the invention as a whole. Furthermore, there must be some suggestion or teaching in the art that would motivate one of ordinary skill in the art to arrive at the claimed invention; a reference that teaches away from a claimed invention strongly indicates nonobviousness.

As already argued, Chief does not teach each element of amended independent Claim 1. Additionally, Chief does not suggest each element of amended independent Claim 1. On the contrary, the Analyzer unit is connected between a host and a peripheral device using two cables wherein a USB signal being monitored **passes through** the Analyzer unit to either the host or peripheral device. Thus, if the Analyzer unit was configured to terminate a cable at either the host or the peripheral device, this would frustrate the operation of the Analyzer unit.

Since the Analyzer unit of Chief actually passes the USB signal through (to or from a host

and peripheral device) rather than terminating it at the host of peripheral device, Chief teaches away from a USB terminator described in the invention as presently claimed. As such, Chief does not teach or suggest each element of amended independent Claim 1 and, therefore, does not provide a *prima facie* case of obviousness of dependent Claim 2. Accordingly, the Applicant respectfully requests the Examiner to withdraw the §103(a) rejection of dependent Claim 2 and allow issuance thereof.

**VI. Rejection of Claims 15-16, and 18 under 35 U.S.C. §103**

The Examiner has rejected Claims 15-16, and 18 under 35 U.S.C. §103(a) as being unpatentable over Chief as applied to Claim 2 and in further view of U.S. Patent No. 7,007,119 to Howard, *et al.* The Applicant respectfully disagrees.

Chief does not teach or suggest a portion of a performance indication system contained within a central processing unit, a peripheral device, or a USB cable assembly as recited in amended independent Claim 15. As discussed above, Chief discloses Analyzer unit that is separately interposed between a USB 1.1 peripheral device and a host computer using a high impedance tap. Thus, even assuming *arguendo* that the analyzer teaches or suggests each element of the performance indication system, the analyzer is not the central processing unit, the peripheral device, or the USB cable assembly as recited in amended independent Claim 15. Accordingly, Chief does not teach or suggest each element of amended independent Claim 15.

Howard was cited to teach a computer system comprising a data transfer rate of a USB 2.0 signal. The Applicant does not find where either Howard or Chief teach or suggest a portion of a performance indication system contained within a central processing unit, a peripheral device, or a

USB cable assembly as recited in amended independent Claim 15. Instead, Howard relates to improving throughput on external busses when supporting devices which adhere to both newer and older versions of external bus protocol. (See column 1, lines 6-12.) As such, Howard does not cure the noted deficiencies of Chief. Accordingly, the cited combination of Chief and Howard does not teach or suggest each limitation as recited in amended independent Claim 15.

Thus, the cited combination of Chief and Howard does not provide a *prima facie* case of obviousness of amended independent Claim 15 and Claims dependent thereon. Therefore, the Applicant respectfully requests the Examiner to withdraw the §103(a) rejection of Claims 15-16 and 18 and allow issuance thereof.

#### **VII. Rejection of Claims 5-7, 12-14, 17, and 19-21 under 35 U.S.C. §103**

The Examiner has rejected Claims 5-7, 12-14, 17, and 19-21 under 35 U.S.C. §103(a) as being unpatentable over Chief in further view of: U.S. Patent No. 5,365,577 to Davis, *et al.*; U.S. Patent Application Publication No. 2003/0026183 by Kitagawa; U.S. Patent No. 6,308,215 to Kolbet, *et al.*; U.S. Patent No. 4,837,488 to Donahue; U.S. Patent No. 6,705,527 to Kelly, *et al.*; Howard; or a combination thereof. As discussed above, Chief does not teach or suggest each limitation of amended independent Claims 1 and 15. Based on the above arguments pertaining to amended independent Claim 1, Chief also does not teach or suggest each limitation of amended independent Claim 8. The Applicant does not find where the above references cure the noted deficiencies of Chief. Additionally, the above references have not been cited to cure these deficiencies of the independent claims but to teach the limitations of the above noted dependent claims. Thus, the cited combinations do not provide a *prima facie* case of obviousness of amended

independent Claims 1, 8, and 15 and Claims dependent thereon. Accordingly, the Applicant respectfully requests the Examiner to withdraw the §103(a) rejection of Claims 5-7, 12-14, 17, and 19-21 and allow issuance thereof.

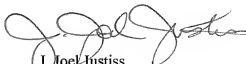
### VIII. Conclusion

In view of the foregoing amendment and remarks, the Applicant now sees all of the Claims currently pending in this application to be in condition for allowance and therefore earnestly solicits a Notice of Allowance for Claims 1-21.

The Applicant requests the Examiner to telephone the undersigned attorney of record at (972) 480-8800 if such would further or expedite the prosecution of the present application. The Commissioner is hereby authorized to charge any fees, credits or overpayments to Deposit Account 08-2395.

Respectfully submitted,

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Dated: October 31, 2006

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